

79 Am. Jur. 2d Weights and Measures Summary

American Jurisprudence, Second Edition | May 2021 Update

Weights and Measures

Marie K. Pesando, J.D.

[Correlation Table](#)

Summary

Scope:

This article contains a discussion of legal principles and public regulations relating to measurements of weight, size, and distance.

Federal Aspects:

Federal standards as to weights and measures are treated herein.

Treated Elsewhere:

Boundary lines, running of and surveying rules and procedures, see [Am. Jur. 2d, Boundaries §§ 46 to 53](#)

Carriers, principles and regulations relating to the size or weight of goods shipped by, see [Am. Jur. 2d, Carriers §§ 325, 331, 332, 517, 583](#)

Customs duties based on amount or quantity, see [Am. Jur. 2d, Customs Duties and Import Regulations § 164](#)

Determination of tare and the prohibition of draft, see [Am. Jur. 2d, Customs Duties and Import Regulations § 171](#)

Evidence of weights and measures, see [Am. Jur. 2d, Evidence § 492](#)

False representations as to quantity of goods or acreage of land, see [Am. Jur. 2d, Fraud and Deceit §§ 163 to 165, 429](#)

Food, principles and regulations relating to the size or weight of, see [Am. Jur. 2d, Food §§ 30, 41](#)

Highways, principles and regulations relating to the size or weight of products handled, used, or disposed of in or on, see [Am. Jur. 2d, Highways, Streets, and Bridges §§ 483, 576, 592, 671](#)

Legality of sales made in violation of weights and measures laws, see [Am. Jur. 2d, Sales § 87](#)

Logs and timber, principles and regulations relating to the size or weight of, see [Am. Jur. 2d, Logs and Timber §§ 7, 28 to 30, 131](#)

Motor vehicles, principles and regulations relating to the size or weight of, see [Am. Jur. 2d, Automobiles and Highway Traffic §§ 75, 76, 208 to 213, 219, 747, 748](#)

Packaging and labeling, statutes and regulations relating to, see [Am. Jur. 2d, Drugs and Controlled Substances §§ 132 to 136; Am. Jur. 2d, Food §§ 23 to 25; Am. Jur. 2d, Monopolies, Restraints of Trade, and Unfair Trade Practices §§ 1099, 1232 to 1252](#)

Time, measurements of, see [Am. Jur. 2d, Time §§ 12 to 22](#)

Warehouses, weighing of goods handled in, see [Am. Jur. 2d, Warehouses § 14](#)

Research References:

Westlaw Databases

[All Federal Cases \(ALLFEDS\)](#)

[All State Cases \(ALLSTATES\)](#)

[American Law Reports \(ALR\)](#)

[West's A.L.R. Digest \(ALRDIGEST\)](#)

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I. Public Regulation and Control

A. In General

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West's Key Number Digest, [Weights and Measures](#)  1, 2, 6

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79 Am. Jur. 2d Weights and Measures § 1

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I. Public Regulation and Control

A. In General

§ 1. Generally; purpose

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"Cheating statutes" at common law proscribed frauds perpetrated against the general public and against which ordinary prudence was no safeguard, including the use of false weights and measures.¹ Regulations involving weights and measures have been a frequent subject of legislation in the United States.²

The general object of statutes or ordinances relating to weights and measures is to protect the public³ and to prevent fraud or imposition.⁴ In matters such as the regulation of weights and measures, the law typically requires a given level of conduct and imposes liability on those who, regardless of intent, do not comply.⁵

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Footnotes

- ¹ [State v. Vikhlyantsev](#), 622 So. 2d 1365 (Fla. 2d DCA 1993).
- ² [Maurer v. Hamilton](#), 309 U.S. 598, 60 S. Ct. 726, 84 L. Ed. 969, 135 A.L.R. 1347 (1940); [South Carolina State Highway Department v. Barnwell Bros.](#), 303 U.S. 177, 58 S. Ct. 510, 82 L. Ed. 734 (1938); [May Coal & Grain Co. v. Kansas City, Mo.](#), 10 F. Supp. 792 (W.D. Mo. 1935).
- ³ [Pacific States Box & Basket Co. v. White](#), 296 U.S. 176, 56 S. Ct. 159, 80 L. Ed. 138, 101 A.L.R. 853 (1935); [Ralph's Grocery Co. v. California Dept. of Food and Agriculture](#), 110 Cal. App. 4th 694, 1 Cal. Rptr. 3d 869 (4th Dist. 2003); [Hay Cotton Co. v. McLeod](#), 185 S.C. 127, 193 S.E. 438 (1937).
- ⁴ [P.F. Petersen Baking Co. v. Bryan](#), 290 U.S. 570, 54 S. Ct. 277, 78 L. Ed. 505, 90 A.L.R. 1285 (1934); [State v. De Witt](#), 49 Ariz. 197, 65 P.2d 659 (1937).
- ⁵ [Delfino v. Sloan](#), 20 Cal. App. 4th 1429, 25 Cal. Rptr. 2d 265 (1st Dist. 1993).

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§ 2. Interpretation

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West's Key Number Digest

West's Key Number Digest, [Weights and Measures](#)  1, 2, 6

The interpretation of statutes relating to weights and measures is governed by rules for the interpretation of statutes generally.¹ The word "person" as used in a statute relating to the sale of commodities by weight or measure has been construed as including a corporation as well as a natural person.² Governmental agencies and cities also fall within the definition of "person" for purposes of weights and measures laws.³

A weights and measures statute has been construed to cover point-of-sale systems.⁴

For purposes of statutory interpretation, the word "location" was found to be ambiguous in a statute limiting the amount of an annual device registration fee which the county could charge per location, and in the county's implementing ordinance, because "location" could refer to a group of discrete objects physically or geographically connected, such as a marina, but could also refer to a single object, such as a single boat slip.⁵

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Footnotes

- ¹ As to the interpretation of statutes, see [Am. Jur. 2d, Statutes §§ 58 to 63](#).
- ² [State v. Belle Springs Creamery Co.](#), 83 Kan. 389, 111 P. 474 (1910).
- ³ [Siegel v. City of Oakland](#), 79 Cal. App. 3d 351, 145 Cal. Rptr. 62 (1st Dist. 1978).
- ⁴ [State ex rel. Morrison v. Oshman Sporting Goods Co.](#) Kansas, 275 Kan. 763, 69 P.3d 1087 (2003).
- ⁵ [Almar Limited v. County of Ventura](#), 56 Cal. App. 4th 105, 65 Cal. Rptr. 2d 70 (2d Dist. 1997).

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§ 3. Generally

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West's Key Number Digest

West's Key Number Digest, [Weights and Measures](#)  1, 2, 6

The validity of statutes or ordinances involving weights and measurements is generally sustained as a proper exercise of the police power.¹ For example, a statute requiring retailers who use the metric system in pricing gasoline to post a table converting the liter price to its gallon equivalent is a reasonable exercise of the state's police powers in that it prevents confusion, deception, and fraud.²

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- ¹ Pacific States Box & Basket Co. v. White, 296 U.S. 176, 56 S. Ct. 159, 80 L. Ed. 138, 101 A.L.R. 853 (1935); General Mills, Inc. v. Jones, 530 F.2d 1317 (9th Cir. 1975), judgment aff'd, 430 U.S. 519, 97 S. Ct. 1305, 51 L. Ed. 2d 604 (1977); Cook Family Foods, Ltd. v. Voss, 781 F. Supp. 1458 (C.D. Cal. 1991); Com. v. Haseotes, 356 Mass. 230, 249 N.E.2d 639 (1969).
- ² People v. Choi, 167 Cal. App. 3d Supp. 6, 213 Cal. Rptr. 205 (App. Dep't Super. Ct. 1985).

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§ 4. Federal and state authority

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The Constitution gives Congress the power to "fix the standard of weights and measures,"¹ and federal law may expressly preempt state law.² This provision generally has been held not to preclude state legislation on the subject where Congress has not enacted legislation.³ Congressional enactments do not exclude all state legislation in the same field but nevertheless override state laws with which they conflict,⁴ and in determining whether, under the circumstances of a particular case, state law stands as an obstacle to accomplish and execute the full purposes and objectives of Congress, a court is required to consider the relationship between the state and federal laws as they are interpreted and applied, not merely as they are written.⁵ Also, congressional intent to preempt may be inferred from the enactment of federal laws that are so pervasive that it would be reasonable to infer that Congress left no room for state supplementation.⁶ For example, state regulation of grain weighing was held to be preempted by federal law where Congress intended its legislation to preempt the field of grain weighing in federally licensed warehouses and because the certification of grain weights comes within the field of grain weighing.⁷

The contention that particular weights and measures regulation constituted an unlawful burden on interstate commerce has been rejected in many instances.⁸

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¹ U.S. Const. Art. I, § 8, cl. 5.

² [Heart of America Grain Inspection Service, Inc. v. Missouri Dept. of Agriculture](#), 123 F.3d 1098 (8th Cir. 1997).

- 3 Parker, Webb & Co. v. Austin, 156 Mich. 573, 121 N.W. 322 (1909); Williams v. Sandles, 93 Ohio St. 92, 112 N.E. 206 (1915).
- As to distribution of powers as between federal and state governments, generally, see Am. Jur. 2d, Constitutional Law §§ 214 to 224.
- 4 Heart of America Grain Inspection Service, Inc. v. Missouri Dept. of Agriculture, 123 F.3d 1098 (8th Cir. 1997).
- 5 Jones v. Rath Packing Co., 430 U.S. 519, 97 S. Ct. 1305, 51 L. Ed. 2d 604 (1977); Cook Family Foods, Ltd. v. Voss, 781 F. Supp. 1458 (C.D. Cal. 1991).
- 6 Heart of America Grain Inspection Service, Inc. v. Missouri Dept. of Agriculture, 123 F.3d 1098 (8th Cir. 1997).
- 7 Heart of America Grain Inspection Service, Inc. v. Missouri Dept. of Agriculture, 123 F.3d 1098 (8th Cir. 1997).
- 8 Pacific States Box & Basket Co. v. White, 296 U.S. 176, 56 S. Ct. 159, 80 L. Ed. 138, 101 A.L.R. 853 (1935); General Mills, Inc. v. Jones, 530 F.2d 1317 (9th Cir. 1975), judgment aff'd, 430 U.S. 519, 97 S. Ct. 1305, 51 L. Ed. 2d 604 (1977); Cook Family Foods, Ltd. v. Voss, 781 F. Supp. 1458 (C.D. Cal. 1991) (but state regulation was preempted by federal law on the ground that it conflicted with the federal law); Com. v. Haseotes, 356 Mass. 230, 249 N.E.2d 639 (1969).

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§ 5. Municipal authority

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West's Key Number Digest

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To prevent misrepresentation and fraud in commercial transactions, weights and measures may be regulated under the police power at the state level and concurrently at the municipal level provided there are no conflicting regulatory provisions.¹ The enactment and enforcement of a weighing ordinance is within the discharge of a governmental function and does not engage the city in commercial business.²

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Footnotes

- ¹ [Blackman v. County Court In and For City and County of Denver](#), 169 Colo. 345, 455 P.2d 885 (1969).
- ² [Siegel v. City of Oakland](#), 79 Cal. App. 3d 351, 145 Cal. Rptr. 62 (1st Dist. 1978); [City of Cartersville v. McGinnis](#), 142 Ga. 71, 82 S.E. 487 (1914).

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§ 6. Discrimination

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In some cases involving statutes or ordinances relating to weights and measures, the contention that the particular regulation denied the equal protection of the laws,¹ or constituted unlawful discrimination² or special legislation, has been rejected.³ Regulations as to weights or measures with reference to specific products are not necessarily invalid because other products are not so regulated.⁴

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Footnotes

- 1 Pacific States Box & Basket Co. v. White, 296 U.S. 176, 56 S. Ct. 159, 80 L. Ed. 138, 101 A.L.R. 853 (1935); P.F. Petersen Baking Co. v. Bryan, 290 U.S. 570, 54 S. Ct. 277, 78 L. Ed. 505, 90 A.L.R. 1285 (1934); Ashland Transfer Co. v. State Tax Commission, 247 Ky. 144, 56 S.W.2d 691, 87 A.L.R. 534 (1932).
- 2 P.F. Petersen Baking Co. v. Bryan, 290 U.S. 570, 54 S. Ct. 277, 78 L. Ed. 505, 90 A.L.R. 1285 (1934); Carolene Products Co. v. Harter, 329 Pa. 49, 197 A. 627, 119 A.L.R. 235 (1938).
- 3 B. L. Cartage Co. v. City of Chicago, 35 Ill. App. 3d 1055, 342 N.E.2d 733 (1st Dist. 1976); Com. v. Haseotes, 356 Mass. 230, 249 N.E.2d 639 (1969).
- 4 Merchants' Exchange of St. Louis v. State of Missouri ex rel. Barker, 248 U.S. 365, 39 S. Ct. 114, 63 L. Ed. 300 (1919); Armour & Co. v. State of North Dakota, 240 U.S. 510, 36 S. Ct. 440, 60 L. Ed. 771 (1916).

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§ 7. Reasonableness

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The validity of a regulation relating to weights and measures depends primarily on whether the regulation is arbitrary, unreasonable, or capricious.¹

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Footnotes

- 1 [Pacific States Box & Basket Co. v. White](#), 296 U.S. 176, 56 S. Ct. 159, 80 L. Ed. 138, 101 A.L.R. 853 (1935); [People v. Hall](#), 314 Ill. App. 3d 688, 247 Ill. Dec. 687, 732 N.E.2d 742 (4th Dist. 2000).

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§ 8. Hardship or inconvenience

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West's Key Number Digest

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Statutes or ordinances relating to weights and measures have been sustained against contentions that they impose hardship.¹
The general rule applies that in the exercise of the police power, mere private inconvenience must yield to the public welfare.²

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¹ [State v. Eck](#), 121 Minn. 202, 141 N.W. 106 (1913).

² [Williams v. Walsh](#), 222 U.S. 415, 32 S. Ct. 137, 56 L. Ed. 253 (1912).

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§ 9. Wisdom

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The wisdom, need, or appropriateness of legislation relating to weights and measures is a question to be answered by the proper legislative authorities,¹ and such an act, when otherwise valid, cannot be impeached merely on the ground that it is unwise.² A law will not be declared invalid merely because less drastic regulations would have served the purpose.³

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Footnotes

- ¹ [Defiance Milk Products Co. v. Du Mond](#), 309 N.Y. 537, 132 N.E.2d 829 (1956) (statute banned evaporated skimmed milk except when sold in bulk).
- ² [City of Cartersville v. McGinnis](#), 142 Ga. 71, 82 S.E. 487 (1914).
- ³ [Carolene Products Co. v. Harter](#), 329 Pa. 49, 197 A. 627, 119 A.L.R. 235 (1938).

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§ 10. Generally

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Statutes and ordinances relating to weights and measures often create administrative agencies or impose specified duties upon existing agencies to ensure compliance with these laws.¹

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Footnotes

- 1 [Merchants' Exchange of St. Louis v. State of Missouri ex rel. Barker](#), 248 U.S. 365, 39 S. Ct. 114, 63 L. Ed. 300 (1919); [Johnson v. Kvale](#), 94 Cal. App. 424, 271 P. 379 (3d Dist. 1928); [State v. Burghart](#), 120 Or. App. 408, 852 P.2d 922 (1993).
Specific duties may include the authority to investigate and make reports. [Maurer v. Hamilton](#), 309 U.S. 598, 60 S. Ct. 726, 84 L. Ed. 969, 135 A.L.R. 1347 (1940).

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§ 11. Administrative regulations

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It traditionally has been held that a legislative body, after declaring a policy and fixing a primary standard relating to such subjects as weights and measures, may confer upon an administrative agency or officer the power to make and effectuate rules and regulations to promote the purpose and spirit of the enacted legislation.¹

It has even been held that a statute providing that the weights of vehicles "shall" be determined in accordance with methods, procedures, and devices established by a state administrative agency imposed a mandatory duty on that agency to promulgate the required rules.²

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- ¹ [Pacific States Box & Basket Co. v. White](#), 296 U.S. 176, 56 S. Ct. 159, 80 L. Ed. 138, 101 A.L.R. 853 (1935); [Alexander v. Director, Dept. of Agriculture](#), 111 Ill. App. 3d 927, 67 Ill. Dec. 575, 444 N.E.2d 811 (3d Dist. 1983) (statute providing for the registration of a scale repairman did not constitute an unlawful delegation of judicial power to an agency); [People v. DeSilva](#), 32 Mich. App. 707, 189 N.W.2d 362 (1971).
- ² [State v. Burghart](#), 120 Or. App. 408, 852 P.2d 922 (1993).

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§ 12. Fees

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Statutes or ordinances may provide for fees to be paid to public officials for services rendered in connection with weighing or measuring¹ and in some instances provide that these fees constitute a lien on the property upon which the service is performed.²

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- 1 [Lindsay & Phelps Co. v. Mullen](#), 176 U.S. 126, 20 S. Ct. 325, 44 L. Ed. 400 (1900); [Almar Limited v. County of Ventura](#), 56 Cal. App. 4th 105, 65 Cal. Rptr. 2d 70 (2d Dist. 1997).
- 2 [Lindsay & Phelps Co. v. Mullen](#), 176 U.S. 126, 20 S. Ct. 325, 44 L. Ed. 400 (1900).

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II. Particular Regulations

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West's Key Number Digest

West's Key Number Digest, [Weights and Measures](#)  3, 5, 7

A primary purpose of weights, measures, and containers legislation, insofar as it prescribes labeling requirements, is to assure that when consumers buy certain quantifiable commodities, whether quantified by weight, measure, or count, reliable representation is made to them as to the precise quantity purchased.¹

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¹ [State v. CompUSA](#), 288 N.J. Super. 413, 672 A.2d 745 (App. Div. 1996).

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§ 14. Commodities sold by package or container

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West's Key Number Digest

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Commodities sold by the package or container have frequently been subjected to regulations as to weights and measures.¹ For example, prepackaged containers of items such as strawberries must disclose the weight and per-pound price of commodities so that the customer may make price and quantity comparisons.²

However, labeling requirements of weights, measures, and containers legislation apply only to products sold by weight, measure, or count and do not apply to single-unit items when customers are clearly aware that they are buying only one.³ A package of toy soldiers is not a "consumer package" within the meaning of a statute establishing a statewide system for enforcing standards of weights and measures.⁴ Also, a food market which sold whole barbecued chicken at a unit price rather than by weight was not in violation of a statute requiring meat to be sold by weight because it would be arbitrary and capricious to regulate its sale by weight only.⁵

Observation:

States may use valid statistical sampling techniques, including reliance on lot average weights, to police compliance with federal and valid state net weight labeling laws.⁶

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Footnotes

- 1 Pacific States Box & Basket Co. v. White, 296 U.S. 176, 56 S. Ct. 159, 80 L. Ed. 138, 101 A.L.R. 853 (1935); Willapoint Oysters v. Ewing, 174 F.2d 676 (9th Cir. 1949); People v. Rath Packing Co., 85 Cal. App. 3d 308, 149 Cal. Rptr. 431 (2d Dist. 1978); State v. Poly-America, Inc., 164 Wis. 2d 238, 474 N.W.2d 770 (Ct. App. 1991).
- 2 Baker's Supermarkets, Inc. v. State, Dept. of Agriculture, 248 Neb. 984, 540 N.W.2d 574 (1995) (disapproved of on other grounds by, American Amusements Co. v. Nebraska Dept. of Revenue, 282 Neb. 908, 807 N.W.2d 492 (2011)).
- 3 State v. CompUSA, 288 N.J. Super. 413, 672 A.2d 745 (App. Div. 1996) (packages containing computer accessories, including keyboards, power surge protectors, and extension cords, are not subject to labeling requirements).
- 4 State by Division of Weights and Measures in Dept. of Revenue and Finance v. Miner Industries, Inc., 177 N.J. Super. 153, 425 A.2d 1074 (App. Div. 1981).
- 5 City of Louisville v. Melton Food Marts, Inc., 564 S.W.2d 849 (Ky. Ct. App. 1978).
- 6 Jones v. Rath Packing Co., 430 U.S. 519, 97 S. Ct. 1305, 51 L. Ed. 2d 604 (1977).

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II. Particular Regulations

A. In General

§ 15. Reweighing or remeasuring

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Weights and Measures](#)  3, 5, 7

Provision is sometimes made for the reweighing or remeasuring of a commodity when a question arises as to the correctness of its net or gross weight.¹ Regulations permitting reweighing or remeasuring further a protective policy by allowing the consumer to check, at the time of acquisition, whether the proper amount of the commodity is being provided.² A statute requiring retailers to maintain scales for the convenience of customers who desire to check the stated weight of prepackaged items has been upheld as a valid exercise of the police power.³ However, in at least one case, a statute or ordinance giving a purchaser or a public official the right to require a second weighing or measuring of a commodity sold, and to stop any person delivering such commodity, and require him or her to proceed to a specified place for the purpose of making tests, has been held invalid.⁴

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Footnotes

- ¹ [Johnson v. Kvale](#), 94 Cal. App. 424, 271 P. 379 (3d Dist. 1928).
- ² [B. L. Cartage Co. v. City of Chicago](#), 35 Ill. App. 3d 1055, 342 N.E.2d 733 (1st Dist. 1976).
- ³ [Com. v. Haseotes](#), 356 Mass. 230, 249 N.E.2d 639 (1969).
- ⁴ [City of Chicago v. Kautz](#), 313 Ill. 196, 144 N.E. 805, 35 A.L.R. 1050 (1924).

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II. Particular Regulations

A. In General

§ 16. Deductions from weights

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Weights and Measures](#)  3, 5, 7

Legislation which prohibits any deduction by the purchaser from the weight of a specified product, under a claim of right by reason of a custom or rule of a board of trade, has been upheld as a valid exercise of the police power.¹ On the other hand, a statute giving a public weigher full discretionary power to fix the tare and reductions from the gross weight of any article weighed "according to the custom of the trade, or as conditions necessary to fairness and justice require," and make the tare or reduction thus ascertained by him or her a conclusive determination of the same, has been held unconstitutional as prohibiting the taking of property without due process of law, purchasers and sellers thus being required to submit to the arbitrary decision of a public weigher, without appeal or other means of redress.²

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Footnotes

¹ [House v. Mayes](#), 219 U.S. 270, 31 S. Ct. 234, 55 L. Ed. 213 (1911).

² [City of Cartersville v. McGinnis](#), 142 Ga. 71, 82 S.E. 487 (1914).

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II. Particular Regulations

B. Weighing and Measuring Devices

[Topic Summary](#) | [Correlation Table](#)

Research References

West's Key Number Digest

West's Key Number Digest, [Weights and Measures](#)  2, 3, 5, 9

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A.L.R. Index, Weights and Measures

West's A.L.R. Digest, [Weights and Measures](#)  2, 3, 5, 9

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II. Particular Regulations

B. Weighing and Measuring Devices

§ 17. Generally

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Weights and Measures](#)  3, 5, 9

Regulations have been enacted to assure the accuracy of weighing or measuring devices used by persons engaged in business transactions¹ and to clarify what constitutes a commercial weighing or measuring device.²

Observation:

A state statute proscribing the possession and use of an incorrect measuring device, which incorporates by reference the federal standards for weighing and measuring devices, is not unconstitutionally vague in its determination of what constitutes an incorrect measuring device.³

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Footnotes

¹ [City of Chicago v. Kautz](#), 313 Ill. 196, 144 N.E. 805, 35 A.L.R. 1050 (1924).

- 2 [Denton v. State](#), 182 Ind. App. 464, 395 N.E.2d 812 (1979), on reh'g, 398 N.E.2d 1288 (Ind. Ct. App. 1979);
State ex rel. [Morrison v. Oshman Sporting Goods Co.](#) Kansas, 30 Kan. App. 2d 383, 42 P.3d 197 (2002),
rev'd on other grounds, 275 Kan. 763, 69 P.3d 1087 (2003).
City parking meters maintained to generate revenue were "noncommercial measuring devices" and thus
were not reached by regulations adopted pursuant to provisions of a weights and measures law authorizing
the adoption of regulations regarding commercial measuring apparatus. [Siegel v. City of Oakland](#), 79 Cal.
App. 3d 351, 145 Cal. Rptr. 62 (1st Dist. 1978).
- 3 [People v. DeSilva](#), 32 Mich. App. 707, 189 N.W.2d 362 (1971).

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II. Particular Regulations

B. Weighing and Measuring Devices

§ 18. Fees

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Weights and Measures](#)  2

Statutes or ordinances frequently provide for fees to be paid to public officials for services rendered in connection with weighing or measuring, and the validity of these laws is generally sustained.¹ For example, a statute governing the amount of an annual device registration fee a county may charge was enacted to allow counties to charge the fee to recover its costs of inspecting or testing commercial and noncommercial weighing and measuring devices.²

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Footnotes

1

[§ 12.](#)

As to the validity of a provision for fees for public weighing, see [§ 27.](#)

2

[Almar Limited v. County of Ventura](#), 56 Cal. App. 4th 105, 65 Cal. Rptr. 2d 70 (2d Dist. 1997).

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C. Public Weighing and Measuring

[Topic Summary](#) | [Correlation Table](#)

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West's Key Number Digest

West's Key Number Digest, [Weights and Measures](#) , 3, 8

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West's A.L.R. Digest, [Weights and Measures](#) , 3, 8

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II. Particular Regulations

C. Public Weighing and Measuring

§ 19. Generally; purpose of regulations

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Weights and Measures](#)  3, 8

Forms

[Am. Jur. Legal Forms 2d § 263:5](#) (Oath of sealer of weights and measures)

Statutes or ordinances often provide for the weighing of stipulated commodities by public weighmasters, or on public scales,¹ and for delivery to the purchaser of the weigher's certificate.²

Statutes providing for public weighers are generally upheld as being within the police power of the state; the purpose of the legislation being to secure fair weights for all parties concerned and to protect both the seller and the public.³ A licensing statute requiring the possession or availability of appropriate equipment, an examination, a demonstration of a working knowledge of weighing and measuring devices, and the filing of a performance bond for a serviceman's license was enacted to protect the public from false weights and measurements by compelling the use of approved standards, and the evil thought to be prevented by the regulation was that of professionals who fail so to protect the public.⁴

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Footnotes

- 1 Hauge v. City of Chicago, 299 U.S. 387, 57 S. Ct. 241, 81 L. Ed. 297 (1937); Johnson v. Kvale, 94 Cal. App.
424, 271 P. 379 (3d Dist. 1928); City of Chicago v. Kautz, 313 Ill. 196, 144 N.E. 805, 35 A.L.R. 1050 (1924).
- 2 Hauge v. City of Chicago, 299 U.S. 387, 57 S. Ct. 241, 81 L. Ed. 297 (1937); Huss v. City of Creston, 224
Iowa 844, 278 N.W. 196, 116 A.L.R. 242 (1938).
- 3 Hay Cotton Co. v. McLeod, 185 S.C. 127, 193 S.E. 438 (1937).
- 4 Alexander v. Director, Dept. of Agriculture, 111 Ill. App. 3d 927, 67 Ill. Dec. 575, 444 N.E.2d 811 (3d Dist.
1983).

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§ 20. Municipal authority

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Weights and Measures](#)  3, 8

Authority to enact ordinances relating to public weighing or measuring is generally granted to municipalities if reasonable in scope,¹ and such ordinances have been held not to be an unlawful burden on interstate commerce.²

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Footnotes

- 1 [City of Chicago v. Kautz](#), 313 Ill. 196, 144 N.E. 805, 35 A.L.R. 1050 (1924); [Huss v. City of Creston](#), 224 Iowa 844, 278 N.W. 196, 116 A.L.R. 242 (1938).
- 2 [B. L. Cartage Co. v. City of Chicago](#), 35 Ill. App. 3d 1055, 342 N.E.2d 733 (1st Dist. 1976).

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II. Particular Regulations

C. Public Weighing and Measuring

§ 21. Discrimination

[Topic Summary](#) | [Correlation Table](#) | [References](#)

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West's Key Number Digest, [Weights and Measures](#)  8

Statutes or ordinances providing for the public weighing of specified products have been upheld as not unduly discriminatory.¹ For example, an ordinance requiring that commodities sold in load lots by weight and delivered by vehicle within the city be weighed by the city public weighmaster was held not invalid even though it inconvenienced outside dealers.² City authorities acting pursuant to the powers granted to them cannot have enacted special legislation, nor denied equal protection by not acting in areas in which the enabling legislation granted them no authority to act.³

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- ¹ [Hauge v. City of Chicago](#), 299 U.S. 387, 57 S. Ct. 241, 81 L. Ed. 297 (1937); [B. L. Cartage Co. v. City of Chicago](#), 35 Ill. App. 3d 1055, 342 N.E.2d 733 (1st Dist. 1976); [Huss v. City of Creston](#), 224 Iowa 844, 278 N.W. 196, 116 A.L.R. 242 (1938).
- ² [Hauge v. City of Chicago](#), 299 U.S. 387, 57 S. Ct. 241, 81 L. Ed. 297 (1937).
- ³ [B. L. Cartage Co. v. City of Chicago](#), 35 Ill. App. 3d 1055, 342 N.E.2d 733 (1st Dist. 1976).

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C. Public Weighing and Measuring

§ 22. Reasonableness; hardship

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Weights and Measures](#)  8

The validity of a statute or ordinance relating to public weighing or measuring has been sustained against claims that it was invalid because it was arbitrary or unreasonable.¹ For example, statutes requiring purchasers to record the weight of each species of fish received from fishermen and requiring a report of the true quantity of fish received were not found to be arbitrary or unreasonable.²

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- 1 [Hauge v. City of Chicago](#), 299 U.S. 387, 57 S. Ct. 241, 81 L. Ed. 297 (1937); [People ex rel. Van de Kamp v. Cappuccio, Inc.](#), 204 Cal. App. 3d 750, 251 Cal. Rptr. 657 (5th Dist. 1988); [Huss v. City of Creston](#), 224 Iowa 844, 278 N.W. 196, 116 A.L.R. 242 (1938).
- 2 [People ex rel. Van de Kamp v. Cappuccio, Inc.](#), 204 Cal. App. 3d 750, 251 Cal. Rptr. 657 (5th Dist. 1988).

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C. Public Weighing and Measuring

§ 23. Rights of weighers

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Weights and Measures](#)  8

A statute prohibiting anyone other than a public weigher from issuing a weight certificate or making charges for weighing certain specified products under specified circumstances has been held to be a valid exercise of legislative power.¹ A provision of a weights and measures law providing that the county sealer test and certify the accuracy of noncommercial measuring devices imposes a mandatory duty on the sealer but does not impose a duty on a person who may, but need not, request the sealer's assistance.²

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Footnotes

¹ [State ex rel. Barker v. Merchants' Exch. of St. Louis](#), 269 Mo. 346, 190 S.W. 903 (1916), [aff'd](#), 248 U.S. 365, 39 S. Ct. 114, 63 L. Ed. 300 (1919).

² [Siegel v. City of Oakland](#), 79 Cal. App. 3d 351, 145 Cal. Rptr. 62 (1st Dist. 1978).

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§ 24. Liability of public weighers

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Weights and Measures](#)  8

Forms

[Am. Jur. Legal Forms 2d § 263:4](#) (Bond of public weigher)

[Am. Jur. Pleading and Practice Forms, Weights, Measures, and Labels §§ 2 to 8](#) (Liability for weights and measures)

Public weighers, knowing that buyers will rely on their certificates of weight in making payments for goods bought, owe them a duty imposed by law of exercising care in furnishing correct weights, although such weighers are employed by the sellers, a breach of which duty will render the weighers liable for losses thereby inflicted on the buyers.¹ An assessment of actual and punitive damages based upon fraudulent representation has been upheld against a public weighmaster who supplied false weight certificates to the buyer who employed him.²

The duty of maintaining a scale in balance is on the employer.³ Therefore, no duty can fall on an employee to select or install suitable scales and, hence, no liability can fall on the employee for maintenance of the scales.⁴

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Footnotes

¹ [Glanzer v. Shepard](#), 233 N.Y. 236, 135 N.E. 275, 23 A.L.R. 1425 (1922).

- 2 Nielson v. Flashberg, 101 Ariz. 335, 419 P.2d 514 (1966).
3 People v. Nunneri, 109 Cal. App. 3d Supp. 35, 168 Cal. Rptr. 103 (App. Dep't Super. Ct. 1980).
4 People v. Nunneri, 109 Cal. App. 3d Supp. 35, 168 Cal. Rptr. 103 (App. Dep't Super. Ct. 1980).

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C. Public Weighing and Measuring

§ 25. Vicarious and direct liability

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Weights and Measures](#)  8

Federal weights and measures law allows for the imposition of vicarious liability on a showing that an agent or servant of the defendant violated the statute and on a showing that the defendant either acted or failed to act when he or she was a person with the responsibility, and power commensurate with that responsibility, to devise whatever measures are necessary to ensure compliance with the statute.¹ However, no guilt predicated on vicarious liability may be found where it cannot be established that an employee acted as the "servant" or "agent" of the defendant.² The imposition of vicarious liability dispenses with the requirement that a personal actus reus be proved only when criminal liability is imposed on a principal whose "servant" or "agent" violates the law.³ Furthermore, direct liability is imposed when a corporate "agent" who "performs" the prohibited act is charged with a violation of the statute; the prosecution is required to prove an actus reus on the part of that "servant" or "agent."⁴

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Footnotes

- 1 [People v. Jasman](#), 92 Mich. App. 81, 284 N.W.2d 496 (1979).
- 2 [People v. DeClerk](#), 400 Mich. 10, 252 N.W.2d 782 (1977).
- 3 [People v. DeClerk](#), 400 Mich. 10, 252 N.W.2d 782 (1977).
- 4 [People v. DeClerk](#), 400 Mich. 10, 252 N.W.2d 782 (1977).

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C. Public Weighing and Measuring

§ 26. Challenging correctness of certificates or sworn statements

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Weights and Measures](#)  8

Forms

[Am. Jur. Legal Forms 2d §§ 263:6, 263:7](#) (Certificate of weight)

[Am. Jur. Legal Forms 2d § 263:13](#) (Provision in contract—Conclusive effect of weight certificate)

Like other instruments, a weight certificate may be attacked on the ground of fraud or mistake.¹ A statute which states that a certificate from the Superintendent of Weights and Measures is presumptive evidence of correctness when an official uses the measuring device in law enforcement does not exclude other methods of proving the authenticity of the device.² Indeed, it is beyond the power of the legislature to make the finding of the weighmaster as to the weights conclusive evidence of that fact,³ and such an act has been held unconstitutional on the ground that it confiscates liberty or property without due process of law.⁴

Observation:

In a prosecution for driving overweight vehicles, the testimony of a state trooper that the scales were tested by the state's Department of Agriculture, were certified, and were "exactly with" a set of state-operated scales provided sufficient evidence to show that the scales had been tested and approved by the state agency.⁵

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Footnotes

- 1 [Johnson v. Kvale, 94 Cal. App. 424, 271 P. 379 \(3d Dist. 1928\).](#)
- 2 [State v. Haskins, 131 N.J. 643, 622 A.2d 867, 81 Ed. Law Rep. 954 \(1993\).](#)
- 3 [Johnson v. Kvale, 94 Cal. App. 424, 271 P. 379 \(3d Dist. 1928\).](#)
- 4 [Shellabarger Elevator Co. v. Illinois Cent. R. Co., 278 Ill. 333, 116 N.E. 170 \(1917\).](#)
- 5 [People v. Jackson, 98 Ill. App. 3d 418, 53 Ill. Dec. 943, 424 N.E.2d 734 \(4th Dist. 1981\).](#)

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II. Particular Regulations

C. Public Weighing and Measuring

§ 27. Fees

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Weights and Measures](#)  8

Statutes or ordinances requiring the weighing of articles on public scales by official weighers frequently provide that fees may be established to recover costs of inspecting or testing commercial and noncommercial weighing and measuring devices required to be tested.¹

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Footnotes

¹ [Almar Limited v. County of Ventura](#), 56 Cal. App. 4th 105, 65 Cal. Rptr. 2d 70 (2d Dist. 1997); [City of Cartersville v. McGinnis](#), 142 Ga. 71, 82 S.E. 487 (1914).

As to the validity of provisions for fees for inspecting weighing and measuring devices, see [§ 18](#); for services relating to weights and measures generally, see [§ 12](#).

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II. Particular Regulations

D. Standard Sizes and Weights

[Topic Summary](#) | [Correlation Table](#)

Research References

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II. Particular Regulations

D. Standard Sizes and Weights

§ 28. Generally; purpose

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Weights and Measures](#)  3, 5, 7

Statutes or ordinances may establish standard sizes or weights for specified products, or the size or capacity of product containers.¹ Statutes requiring accurate weights were designed to protect the public from the use of false weights and measures,² and from unfair dealings such as where a person who sells tangible goods collects a fee based on the weight of the goods sold, but the same regulatory and licensing scheme does not apply when the scales are used to compute a charge for a delivery service.³ A secondary purpose is to prevent unfair competition among sellers, manufacturers, and producers.⁴

Statutes or ordinances establishing standard sizes or weights may prescribe a minimum weight or quantity of an article that may be sold;⁵ or prescribe that when an article is sold other than in bulk or by weight, it must be sold in packages containing a specified weight or quantity;⁶ or prescribe that an article must be sold at, or in packages of, a certain weight or quantity, and expressly or impliedly prohibit a sale in any other manner.⁷ A state statute may also establish that a gasoline distributor does not have a legal obligation to bill its service station dealers based upon the temperature-compensated volume of gasoline delivered as opposed to the actual volume delivered.⁸

A manufacturer of food is not subject to an enforcement action for violation of statutory net weight labeling requirements if the label accurately states the net weight, with allowance for specified reasonable variations.⁹

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Footnotes

- ¹ P.F. Petersen Baking Co. v. Bryan, 290 U.S. 570, 54 S. Ct. 277, 78 L. Ed. 505, 90 A.L.R. 1285 (1934); State v. De Witt, 49 Ariz. 197, 65 P.2d 659 (1937); Baker's Supermarkets, Inc. v. State, Dept. of Agriculture,

- 248 Neb. 984, 540 N.W.2d 574 (1995) (disapproved of on other grounds by, *American Amusements Co. v. Nebraska Dept. of Revenue*, 282 Neb. 908, 807 N.W.2d 492 (2011)).
- 2 *People ex rel. Van de Kamp v. Cappuccio, Inc.*, 204 Cal. App. 3d 750, 251 Cal. Rptr. 657 (5th Dist. 1988); *Alexander v. Director, Dept. of Agriculture*, 111 Ill. App. 3d 927, 67 Ill. Dec. 575, 444 N.E.2d 811 (3d Dist. 1983).
- 3 *Pitney-Bowes, Inc. v. State of California*, 108 Cal. App. 3d 307, 166 Cal. Rptr. 489 (2d Dist. 1980).
- 4 *P.F. Petersen Baking Co. v. Bryan*, 290 U.S. 570, 54 S. Ct. 277, 78 L. Ed. 505, 90 A.L.R. 1285 (1934).
- 5 *Allion v. City of Toledo*, 99 Ohio St. 416, 124 N.E. 237, 6 A.L.R. 426 (1919); *Carolene Products Co. v. Harter*, 329 Pa. 49, 197 A. 627, 119 A.L.R. 235 (1938).
- 6 *Armour & Co. v. State of North Dakota*, 240 U.S. 510, 36 S. Ct. 440, 60 L. Ed. 771 (1916); *State v. Co-operative Store Co.*, 123 Tenn. 399, 131 S.W. 867 (1910).
- 7 *Jay Burns Baking Co. v. Bryan*, 264 U.S. 504, 44 S. Ct. 412, 68 L. Ed. 813, 32 A.L.R. 661 (1924); *State v. De Witt*, 49 Ariz. 197, 65 P.2d 659 (1937).
- 8 *Bolam v. Mobil Oil Corp.*, 893 F.2d 311 (11th Cir. 1990).
- 9 *Jones v. Rath Packing Co.*, 430 U.S. 519, 97 S. Ct. 1305, 51 L. Ed. 2d 604 (1977); *People v. Rath Packing Co.*, 85 Cal. App. 3d 308, 149 Cal. Rptr. 431 (2d Dist. 1978).

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II. Particular Regulations

D. Standard Sizes and Weights

§ 29. Constitutionality

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Weights and Measures](#)  2

The validity of statutes and ordinances establishing standard sizes or weights for specified products, or the size or capacity of product containers, has been sustained as a proper exercise of the police power.¹ However, particular provisions have been regarded as invalid.²

In determining whether such a statute or ordinance is a constitutional exercise of the police power, a court must determine whether the challenged provision is reasonably related to the protection of purchasers against fraud and tends to accomplish the purpose for which it was intended.³ The particular constitutional objections that have been urged against such regulations are considered in succeeding sections.⁴

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Footnotes

- 1 [Pacific States Box & Basket Co. v. White](#), 296 U.S. 176, 56 S. Ct. 159, 80 L. Ed. 138, 101 A.L.R. 853 (1935); [State v. De Witt](#), 49 Ariz. 197, 65 P.2d 659 (1937).
- 2 [Jay Burns Baking Co. v. Bryan](#), 264 U.S. 504, 44 S. Ct. 412, 68 L. Ed. 813, 32 A.L.R. 661 (1924); [Defiance Milk Products Co. v. Du Mond](#), 309 N.Y. 537, 132 N.E.2d 829 (1956).
- 3 [Jay Burns Baking Co. v. Bryan](#), 264 U.S. 504, 44 S. Ct. 412, 68 L. Ed. 813, 32 A.L.R. 661 (1924); [Defiance Milk Products Co. v. Du Mond](#), 309 N.Y. 537, 132 N.E.2d 829 (1956).
- 4 §§ 30 et seq.

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79 Am. Jur. 2d Weights and Measures § 30

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§ 30. Constitutionality—Discrimination

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Weights and Measures](#)  3, 5

The constitutionality of statutes or ordinances prescribing standard sizes or weights for specified products, or the size of product containers, has been upheld against the contention that the particular regulation denied the equal protection of the laws,¹ constituted an unlawful discrimination,² or was invalid as special legislation.³ Thus, a statute imposing record-keeping requirements on persons who weigh goods before or after unloading does not treat similarly situated people differently and does not violate the equal protection clause.⁴

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Footnotes

- ¹ [Pacific States Box & Basket Co. v. White](#), 296 U.S. 176, 56 S. Ct. 159, 80 L. Ed. 138, 101 A.L.R. 853 (1935); [P.F. Petersen Baking Co. v. Bryan](#), 290 U.S. 570, 54 S. Ct. 277, 78 L. Ed. 505, 90 A.L.R. 1285 (1934); [State v. Kager](#), 382 N.W.2d 287 (Minn. Ct. App. 1986).
- ² [P.F. Petersen Baking Co. v. Bryan](#), 290 U.S. 570, 54 S. Ct. 277, 78 L. Ed. 505, 90 A.L.R. 1285 (1934); [People v. Hall](#), 314 Ill. App. 3d 688, 247 Ill. Dec. 687, 732 N.E.2d 742 (4th Dist. 2000); [Carolene Products Co. v. Harter](#), 329 Pa. 49, 197 A. 627, 119 A.L.R. 235 (1938).
- ³ [City of Chicago v. Schmidinger](#), 243 Ill. 167, 90 N.E. 369 (1909), *aff'd*, 226 U.S. 578, 33 S. Ct. 182, 57 L. Ed. 364 (1913).
- ⁴ [State v. Kager](#), 382 N.W.2d 287 (Minn. Ct. App. 1986).

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II. Particular Regulations

D. Standard Sizes and Weights

§ 31. Constitutionality—Reasonableness; hardship

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Weights and Measures](#)  3, 5

For the purpose of determining whether a statute or ordinance prescribing standard sizes or weights for specified products, or the size or capacity of product containers, is a proper exercise of the police power, the courts must determine whether the regulation is reasonable, arbitrary, or capricious.¹ A statute mandating containers of minimum capacity many times larger than could or would be sold in a retail food shop effectively prohibited all sales at retail for household use and was therefore held unconstitutional as arbitrary and unnecessary.²

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Footnotes

- ¹ [Pacific States Box & Basket Co. v. White](#), 296 U.S. 176, 56 S. Ct. 159, 80 L. Ed. 138, 101 A.L.R. 853 (1935); [People v. Hall](#), 314 Ill. App. 3d 688, 247 Ill. Dec. 687, 732 N.E.2d 742 (4th Dist. 2000).
- ² [Defiance Milk Products Co. v. Du Mond](#), 309 N.Y. 537, 132 N.E.2d 829 (1956).

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II. Particular Regulations

D. Standard Sizes and Weights

§ 32. State and municipal authority

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Weights and Measures](#)  3, 5

Forms

[Am. Jur. Pleading and Practice Forms, Weights, Measures, and Labels § 8](#) (Complaint, petition, or declaration—Against state and officer—To enjoin enforcement of statute prescribing standard size or weight for product)

In particular cases, the validity of state legislation of standard sizes or weights for a specified product, or the size or capacity of product containers, has been sustained against contentions that it constituted an unlawful burden on interstate commerce¹ or was in conflict with federal legislation as to a matter within the scope of federal authority.² However, a state's regulation of grain weighing was held to be preempted by federal law where Congress intended its legislation to preempt the field of grain weighing in federally licensed warehouses and because the certification of grain weights comes within the field of grain weighing, notwithstanding the fact that federal law did not explicitly regulate the class of certified weights at issue or the persons who provided them.³

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Footnotes

- ¹ [Pacific States Box & Basket Co. v. White](#), 296 U.S. 176, 56 S. Ct. 159, 80 L. Ed. 138, 101 A.L.R. 853 (1935); [Cook Family Foods, Ltd. v. Voss](#), 781 F. Supp. 1458 (C.D. Cal. 1991) (but state regulation was preempted by federal law on the ground that it conflicted with the federal law).

- 2 Pacific States Box & Basket Co. v. White, 296 U.S. 176, 56 S. Ct. 159, 80 L. Ed. 138, 101 A.L.R. 853 (1935); People v. Choi, 167 Cal. App. 3d Supp. 6, 213 Cal. Rptr. 205 (App. Dep't Super. Ct. 1985).
- 3 Heart of America Grain Inspection Service, Inc. v. Missouri Dept. of Agriculture, 123 F.3d 1098 (8th Cir. 1997).

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D. Standard Sizes and Weights

§ 33. Administrative authority

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Weights and Measures](#)  3, 5

Some statutes authorize particular administrative officers or bodies to prescribe standard containers in which specified products are to be sold, packed, or transported for sale.¹ Other statutes establish standard sizes or weights for specified products, or the size or capacity of product containers, and direct a specified officer to prescribe tolerances, as necessary, in the sizes, weights, or capacities set forth in the statute,² or establish certain exceptions to the operation of the statute and designate an administrative officer or body to determine what products come within the exception.³ The legislature, in delegating to an administrative agency the performance of certain functions, may not invest that agency with arbitrary powers.⁴ It is an unlawful delegation of legislative power for a statute to give an administrative officer the opportunity to apply the law to one and not apply the law to another in like circumstances.⁵

Practice Tip:

A party complaining that administrative regulations promulgated under that authority are unreasonable and oppressive should, before resorting to the courts for an injunction, seek relief by asking the administrative authority to modify them.⁶

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Footnotes

- 1 [Pacific States Box & Basket Co. v. White, 296 U.S. 176, 56 S. Ct. 159, 80 L. Ed. 138, 101 A.L.R. 853 \(1935\).](#)
- 2 [United States v. Resnick, 299 U.S. 207, 57 S. Ct. 126, 81 L. Ed. 127 \(1936\).](#)
- 3 [P.F. Petersen Baking Co. v. Bryan, 290 U.S. 570, 54 S. Ct. 277, 78 L. Ed. 505, 90 A.L.R. 1285 \(1934\).](#)
- 4 [P.F. Petersen Baking Co. v. Bryan, 290 U.S. 570, 54 S. Ct. 277, 78 L. Ed. 505, 90 A.L.R. 1285 \(1934\);](#)
[People v. Hall, 314 Ill. App. 3d 688, 247 Ill. Dec. 687, 732 N.E.2d 742 \(4th Dist. 2000\).](#)
- 5 [People v. Hall, 314 Ill. App. 3d 688, 247 Ill. Dec. 687, 732 N.E.2d 742 \(4th Dist. 2000\).](#)
- 6 [P.F. Petersen Baking Co. v. Bryan, 290 U.S. 570, 54 S. Ct. 277, 78 L. Ed. 505, 90 A.L.R. 1285 \(1934\).](#)

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West's Key Number Digest, [Weights and Measures](#)  1 to 3, 6

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A.L.R. Index, Weights and Measures

West's A.L.R. Digest, [Weights and Measures](#)  1 to 3, 6

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II. Particular Regulations

E. Federal Standards

§ 34. Powers, duties, and functions of National Institute of Standards and Technology and Secretary of Commerce

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Weights and Measures](#)  1, 3

The National Institute of Standards and Technology, within the Department of Commerce, is charged with the obligation of implementing and enforcing national standards.¹ The functions of the Secretary of Commerce, acting through the Director of the National Institute of Standards and Technology, and, if appropriate, other officials, are set out by statute² and include, inter alia:

- developing, maintaining, and retaining custody of the national standards of measurement³
- assisting the industry in the development of measurements, measurement methods, and basic measurement technology⁴
- assuring the compatibility of United States national measurement standards with those of other nations⁵
- cooperating with other departments and agencies of federal, state, and local government, with industry, with other nations and international organizations, and with private organizations in establishing standard practices, codes, specifications, and voluntary consensus standards⁶
- inventing, developing, and promoting transfer to the private sector, where appropriate, of measurement devices to serve special national needs⁷

In order to implement these functions, the Secretary, acting through the Director and, if appropriate, other officials, may, inter alia, test, calibrate, and certify standards and standard measuring apparatus;⁸ study and improve instruments and methods of measurement;⁹ and cooperate with the states in securing uniformity in weights and measures laws and methods of inspection.¹⁰

The Secretary is also required to make regulations regarding, inter alia, the limits of tolerance to be attained in standards submitted for verification and for the sealing of standards.¹¹

CUMULATIVE SUPPLEMENT

Statutes:

15 U.S.C.A. § 272(e), as added effective December 18, 2014, provides that the Director of the National Institute of Standards and Technology must coordinate and consult with the private sector to reduce cyber risks to critical infrastructure.

[END OF SUPPLEMENT]

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Footnotes

- | | |
|----|--|
| 1 | 15 U.S.C.A. §§ 271 et seq.; 15 C.F.R. §§ 200.100 et seq. |
| 2 | 15 U.S.C.A. § 272. |
| 3 | 15 U.S.C.A. § 272(b)(2). |
| 4 | 15 U.S.C.A. § 272(b)(6). |
| 5 | 15 U.S.C.A. § 272(b)(9). |
| 6 | 15 U.S.C.A. § 272(b)(10). |
| 7 | 15 U.S.C.A. § 272(b)(12). |
| 8 | 15 U.S.C.A. § 272(c)(2). |
| 9 | 15 U.S.C.A. § 272(c)(3). |
| 10 | 15 U.S.C.A. § 272(c)(4). |
| 11 | 15 U.S.C.A. § 277. |

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II. Particular Regulations

E. Federal Standards

§ 35. Furnishing standards to institutions, states, and territories

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Weights and Measures](#)  1, 3

The Secretary of Commerce is required to furnish a complete set of all the weights and measures adopted as standards to the governor of each state for the use of state agricultural colleges which have received United States land grants and must also furnish such a set to the Smithsonian Institution.¹ Necessary repairs and adjustments to standards furnished to states and territories must be made as requested by the governors thereof, and such repairs and adjustments must also be made, upon request of the Secretary of Commerce, to all standards supplied by act of Congress to United States Customs Houses and other United States offices.² States, territories, and institutions which have received standards may obtain duplicate sets to replace lost or destroyed sets upon payment of costs and application by the governor of a state or territory, or by the head of an institution.³

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Footnotes

¹ 15 U.S.C.A. § 201.

² 15 U.S.C.A. § 202.

³ 15 U.S.C.A. § 203.

As to the procedure for ordering standard reference materials issued by the National Bureau of Standards to calibrate a measurement system, see [15 C.F.R. §§ 230.1 et seq.](#)

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II. Particular Regulations

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§ 36. Metric system authorized

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Weights and Measures](#)  2, 3, 6

Definition:

The "metric system" of measurement is defined as the International System of Units as established in 1960, and subsequently maintained, by the General Conference of Weights and Measures, and as interpreted or modified for the United States by the Secretary of Commerce.¹

It is lawful throughout the United States to use the weights and measures of the metric system.² No contract, dealing, or pleading may be deemed invalid or objectionable because weights and measures expressed or referred to therein are metric weights and measures.³

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Footnotes

¹ [15 U.S.C.A. § 205.](#)

² [15 U.S.C.A. § 204.](#)

³ [15 U.S.C.A. § 204.](#)

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§ 37. Metric Conversion Act of 1975

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Weights and Measures](#)  2, 3, 6

The Metric Conversion Act of 1975¹ designates the metric system as the preferred system of weights and measures for United States trade and commerce;² requires that federal agencies use the metric system in procurements, grants, and other business-related activities except when impractical;³ seeks out ways to increase understanding of the metric system through educational information and guidance;⁴ and permits the continued use of traditional systems of weights and measures in nonbusiness activities.⁵ The Act also establishes a United States Metric Board to coordinate the voluntary conversion to the metric system.⁶

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Footnotes

- | | |
|---|------------------------------|
| 1 | 15 U.S.C.A. §§ 205a et seq. |
| 2 | 15 U.S.C.A. § 205b(1). |
| 3 | 15 U.S.C.A. § 205b(2). |
| 4 | 15 U.S.C.A. § 205b(3). |
| 5 | 15 U.S.C.A. § 205b(4). |
| 6 | 15 U.S.C.A. §§ 205d to 205f. |

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§ 38. Model Metric System Procedure Act

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Weights and Measures](#)  2, 3, 6

The Model Metric System Procedure Act is intended to supply an "effective structural mechanism" for converting customary units to metric units in statutes, regulations, and other laws at all levels of government, as directed by the Metric Conversion Act of 1975,¹ so as to forestall any attempt to enact federal preemptive legislation in the traditionally state-controlled weights and measures area.²

Article 1 includes definitions and general provisions which, inter alia, clarify that the Model Act is not intended to represent a legislative policy in favor of metric conversion and require that state and local metric conversion activity be coordinated with activities in other states.³

Article 2 creates an Interagency Metric Committee⁴ and a Metric Advisory Council with representation from both houses of the state legislature and with power to coordinate metric conversion within the state.⁵

Article 3 addresses the conversion of customary measurements appearing in legal documents including, inter alia, state and local statutes,⁶ court rules and other judicial documents,⁷ and the drafting of new statutes and the proposal of new administrative rules.⁸

No substitution may be made or other action taken unless a number of procedures are observed, including public notice and opportunity for hearing, findings with respect to conformity to applicable national or regional metrication programs, and explanation of rounding.⁹

Article 4 contains provisions to, inter alia, encourage metric education of the public,¹⁰ address the conversion of utility rates and other controlled prices,¹¹ and expand the powers of the administrator and the state weights and measures agency to deal with a variety of metrication issues and problems.¹²

Article 5 contains formal provisions relating to uniformity of construction and severability and important alternative substantive provisions relating to the contingent repeal of existing statutory provisions that utilize customary references.¹³

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Footnotes

- 1 15 U.S.C.A. § 205e.
- 2 Model Metric System Procedure Act Prefatory Note.
- 3 Model Metric System Procedure Act § 102.
- 4 Model Metric System Procedure Act § 202.
- 5 Model Metric System Procedure Act § 203.
- 6 Model Metric System Procedure Act §§ 301 to 303. Section 301, together with § 503, provides, in effect, that all references to customary quantities in statutes are repealed but that the repeal as to any particular quantity takes effect only as when the void is filled by a legally enforceable statement on the same subject generated under the procedures of the Model Act.
- 7 Model Metric System Procedure Act § 308.
- 8 Model Metric System Procedure Act §§ 309, 310.
- 9 Model Metric System Procedure Act § 306. Section 304 states that rounding may be to within the lesser of 1% or \$0.01 in money value in the case of fees, taxes, charges, utility rates, controlled prices, and similar financial matters or within 12.5% in any other case.
- 10 Model Metric System Procedure Act § 401.
- 11 Model Metric System Procedure Act § 402.
- 12 Model Metric System Procedure Act §§ 405 to 408.
- 13 Model Metric System Procedure Act §§ 501 to 503.

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§ 39. Standard barrels

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Weights and Measures](#)  3, 6

Congress has established specific measurements for standard apple barrels,¹ fruit and other dry commodities barrels,² and lime barrels.³ Violations are established for improper marking of apple barrels,⁴ sale and shipment of substandard barrels of fruits and other dry commodities,⁵ and selling lime in unmarked barrels.⁶ Penalties for such violations are provided by law.⁷ The director of the National Bureau of Standards and Technology is required to establish rules and regulations for enforcement of the statutes⁸ relating to standard lime barrels,⁹ and the United States Attorney has the duty of enforcing such statutes.¹⁰

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Footnotes

- | | |
|----|------------------------------------|
| 1 | 15 U.S.C.A. § 231. |
| 2 | 15 U.S.C.A. §§ 234, 236. |
| 3 | 15 U.S.C.A. § 237. |
| 4 | 15 U.S.C.A. § 232. |
| 5 | 15 U.S.C.A. § 235. |
| 6 | 15 U.S.C.A. §§ 238, 241. |
| 7 | 15 U.S.C.A. §§ 233, 235, 238, 241. |
| 8 | 15 U.S.C.A. §§ 240 to 242. |
| 9 | 15 U.S.C.A. § 240. |
| 10 | 15 U.S.C.A. § 242. |

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III. Crimes; Penal Provisions

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III. Crimes; Penal Provisions

§ 40. Generally

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Weights and Measures](#)  3, 9 to 12

The violation of a law relating to weights and measures is generally considered to be a criminal offense.¹

In selecting the amount of the penalty to be imposed, a court may consider the defendant's financial condition and whether the penalty imposed is sufficient to deter future violations.²

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Footnotes

- ¹ [Williams v. Walsh](#), 222 U.S. 415, 32 S. Ct. 137, 56 L. Ed. 253 (1912); [State v. De Witt](#), 49 Ariz. 197, 65 P.2d 659 (1937); [Ralph's Grocery Co. v. California Dept. of Food and Agriculture](#), 110 Cal. App. 4th 694, 1 Cal. Rptr. 3d 869 (4th Dist. 2003); [Com. v. Haseotes](#), 356 Mass. 230, 249 N.E.2d 639 (1969); [Baker's Supermarkets, Inc. v. State, Dept. of Agriculture](#), 248 Neb. 984, 540 N.W.2d 574 (1995) (disapproved of on other grounds by, [American Amusements Co. v. Nebraska Dept. of Revenue](#), 282 Neb. 908, 807 N.W.2d 492 (2011)).
- ² [People ex rel. Van de Kamp v. Cappuccio, Inc.](#), 204 Cal. App. 3d 750, 251 Cal. Rptr. 657 (5th Dist. 1988).

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III. Crimes; Penal Provisions

§ 41. Short weights or measures

[Topic Summary](#) | [Correlation Table](#) | [References](#)

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Understating the weight of merchandise or goods was a crime at common law,¹ and knowledge that the weight or measure given was incorrect has been held to be an essential element of the offense.² However, it has been held that the express exclusion of the word "knowingly" from a state law governing the use of short weights indicates legislative intent not to make scienter an element of the act.³

No showing of injury to consumers, competitors, or the public is necessary to maintain an action alleging that wholesalers committed unlawful business practices by understating weight.⁴ The only defense to an allegation of selling a short weight is a record of the true weight; industry custom is no defense.⁵

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Footnotes

- 1 [State v. Washed Sand & Gravel Co., 136 Minn. 361, 162 N.W. 451 \(1917\).](#)
- 2 [State v. Washed Sand & Gravel Co., 136 Minn. 361, 162 N.W. 451 \(1917\).](#)
- 3 [People v. Najy Jaboro, Wonder Super Foods, 76 Mich. App. 8, 255 N.W.2d 355 \(1977\).](#)
- 4 [People ex rel. Van de Kamp v. Cappuccio, Inc., 204 Cal. App. 3d 750, 251 Cal. Rptr. 657 \(5th Dist. 1988\).](#)
- 5 [People ex rel. Van de Kamp v. Cappuccio, Inc., 204 Cal. App. 3d 750, 251 Cal. Rptr. 657 \(5th Dist. 1988\).](#)

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§ 42. Reasonableness

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The power to authorize the imposition of a penalty for the violation of a regulation relating to weights and measures has been upheld where the penalty authorized is appropriate and reasonable.¹ Thus, individual fines for each of 19 violations of certain provisions of a state law relating to false measuring devices was not an excessive punishment; however, the defendant could not be fined more than the statutory maximum on any count.²

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¹ [City of Cartersville v. McGinnis](#), 142 Ga. 71, 82 S.E. 487 (1914).

² [People v. Ruvinsky](#), 143 A.D.2d 1062, 533 N.Y.S.2d 766 (2d Dep't 1988).

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III. Crimes; Penal Provisions

§ 43. Knowledge or intent as element of offense

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Under some penal statutes relating to weights and measures, knowledge or intent is an essential element of the offense.¹ However, actual intent to injure competitors or destroy competition by underweighing squid purchased from fishermen was not a prerequisite in an action against wholesalers for committing an unlawful business practice by understating weight because members of the public, as well as the state's Department of Fish and Game, would likely be deceived if they relied on the wholesalers' characterization of the weight of squid landed.² In at least one case, other evidence has sustained a defendant's conviction for violations of weights and measures statutes, notwithstanding the absence of evidence of scienter.³

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Footnotes

- ¹ [State v. Washed Sand & Gravel Co.](#), 136 Minn. 361, 162 N.W. 451 (1917).
- ² [People ex rel. Van de Kamp v. Cappuccio, Inc.](#), 204 Cal. App. 3d 750, 251 Cal. Rptr. 657 (5th Dist. 1988).
- ³ [People v. Najy Jaboro](#), [Wonder Super Foods](#), 76 Mich. App. 8, 255 N.W.2d 355 (1977).

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§ 44. Persons liable

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A principal or master is liable for the acts of his or her agent or servant in the giving of a false weight or measure irrespective of the idea of guilty knowledge or intent¹ except in cases of mistake or fraud on the part of the agent or servant, or where he or she is acting on his or her own initiative.² The owner of a business is presumed to have the authority to devise whatever measures are necessary to insure compliance with the federal weights and measures law.³ Thus, where a defendant who was charged with understating the weight of packaged meat was the owner of the market in question, the defendant impliedly had to have acted himself or through one of his employee-agents in connection with the short weighing.⁴

To impose direct liability on a corporate agent who performs a prohibited act, the prosecution is required to prove actus reus on part of that servant or agent.⁵ The element of actus reus required to establish a violation of weights and measures law may be established by showing the failure to act by one with responsibility and power commensurate with that responsibility to devise whatever measures are necessary to insure compliance with the statute.⁶ For example, a showing of the responsibility or authority of a defendant, the "station manager" of a corporate-owned gas station who failed to activate the zero setback interlock on a diesel fuel pump after its delivery to a customer, was an essential element of the prosecutor's proofs and, absent a showing that the defendant had the responsibility to devise whatever measures were necessary to ensure compliance with federal weights and measures law, the conviction was reversed.⁷

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Footnotes

- ¹ [Meigs v. State](#), 94 Fla. 809, 114 So. 448 (1927); [Com. v. Sacks](#), 214 Mass. 72, 100 N.E. 1019 (1913).
- ² [City of Newark v. East Side Coal Co.](#), 77 N.J.L. 732, 73 A. 484 (N.J. Ct. Err. & App. 1909).
- ³ [People v. Jasman](#), 92 Mich. App. 81, 284 N.W.2d 496 (1979).

- 4 [People v. Najy Jaboro, Wonder Super Foods, 76 Mich. App. 8, 255 N.W.2d 355 \(1977\).](#)
- 5 [People v. DeClerk, 400 Mich. 10, 252 N.W.2d 782 \(1977\).](#)
 For a discussion of vicarious and direct liability, see § 25.
- 6 [People v. DeClerk, 400 Mich. 10, 252 N.W.2d 782 \(1977\).](#)
- 7 [People v. Jasman, 92 Mich. App. 81, 284 N.W.2d 496 \(1979\).](#)

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79 Am. Jur. 2d Weights and Measures § 45

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III. Crimes; Penal Provisions

§ 45. Indictment, information, or complaint

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The rules pertaining to indictments and informations generally are applicable to prosecutions for the violation of statutes relating to weights and measures.¹ In some cases, the rule requiring the negation of an exception or proviso in a statute does not apply,² and the failure of a complaint to negative a proviso in a statute, that a slight variation from the stated weight, measure, or quantity for individual packages is permissible provided the variation is as often above as below the weight, measure, or quantity stated, has been held not to render the complaint defective.³ However, a conviction of false weighing cannot stand if the indictment charges the defendant with the violation of a statute which does not apply to the capacity in which he or she acted.⁴

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Footnotes

- ¹ [State v. De Witt](#), 49 Ariz. 197, 65 P.2d 659 (1937).
- ² [Am. Jur. 2d, Indictments and Informations § 109.](#)
- ³ [State v. Belle Springs Creamery Co.](#), 83 Kan. 389, 111 P. 474 (1910).
- ⁴ [Peoples Tobacco Warehouse, Inc. v. Com.](#), 310 S.W.2d 781 (Ky. 1958).

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IV. Measurement of Distance

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IV. Measurement of Distance

§ 46. Generally

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[Measurement of distances for purposes of enactment prohibiting sale, or license for sale, of intoxicating liquor within given distance from church, university, school, or other institution or property as base, 4 A.L.R.3d 1250](#)

In the absence of any specific statutory provision governing the manner of measurement of distances, distance is to be measured along the shortest straight line,¹ on a horizontal plane,² and not along the course of a highway³ or along the usual traveled way.⁴

However, the ordinary, usual, and shortest route of public travel may be measured where the context indicates that the distance referred to is to be traveled.⁵

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Footnotes

- 1 [Board of Trustees of Leland Stanford Junior University v. State Bd. of Equalization, 1 Cal. 2d 784, 37 P.2d 84, 96 A.L.R. 775 \(1934\); Stark County v. Henry County, 326 Ill. 535, 158 N.E. 116, 54 A.L.R. 777 \(1927\).](#)
- 2 [Evans v. U.S., 261 F. 902 \(C.C.A. 2d Cir. 1919\); Stark County v. Henry County, 326 Ill. 535, 158 N.E. 116, 54 A.L.R. 777 \(1927\).](#)
- 3 [Stark County v. Henry County, 326 Ill. 535, 158 N.E. 116, 54 A.L.R. 777 \(1927\).](#)
- 4 [City of Blackwell v. City of Newkirk, 1912 OK 117, 31 Okla. 304, 121 P. 260 \(1912\), dismissed, 232 U.S. 718, 34 S. Ct. 479, 58 L. Ed. 813 \(1914\).](#)

- 5 [Stark County v. Henry County](#), 326 Ill. 535, 158 N.E. 116, 54 A.L.R. 777 (1927).
As to the measurement of distances stipulated in deeds, see [Am. Jur. 2d, Boundaries § 48](#).
As to the measurement of distances for purposes of a statute or regulation prohibiting the sale, or license for sale, of intoxicating liquor within a given distance from a church, school, or other institution, see [Am. Jur. 2d, Intoxicating Liquors § 112](#).

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